Seattle City Attorney's Office Annual Report 2003

Thomas A. CarrSeattle City Attorney

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TO: The Mayor and the Seattle City Council

I am pleased to present the following Annual Report for the City Attorney's office pursuant to Article XXII, section 12 of the Seattle City Charter. This report covers the year ending December 31, 2003.

This report displays the breadth and scope of our work on behalf of the City. In 2003, our office was involved in almost every aspect of City government. We assisted policy-makers with difficult issues ranging from the Northgate and University of Washington master plans to the planning for the new monorail. We assisted with the drafting and revision of hundreds of ordinances, including a new animal control ordinance and a new noise control ordinance. We litigated cases in the Washington Supreme Court, the Ninth Circuit Court of Appeals, the Washington State Court of Appeals and, of course, in various trial courts. The following report provides an overview of this work.

Thomas A. Carr Seattle City Attorney

Office Overview

Seattle City Attorney Tom Carr is a nonpartisan elected official. Seattle has elected its attorney since 1875. Mr. Carr is the 29th person to serve in this position. Mr. Carr heads the City's Law Department, which employs 148 people, including 79 attorneys. It is the third largest public law office in the State of Washington. The office provides legal advice to City officials to help them achieve their goals, represents the City in litigation, and protects public health, safety, and welfare by prosecuting criminal and civil violations of City ordinances. The office consists of three divisions: Civil, Public & Community Safety, and Administration.

The Civil Division is organized into eight specialized areas of practice. Civil Division attorneys provide legal counsel, as well as representation in litigation at all levels of state and federal courts, and administrative agencies. The practice areas are: Civil Enforcement, Contracts, Employment, Environmental Protection, Land Use, Municipal Law, Torts and Utilities.

The Public & Community Safety Division prosecutes misdemeanors committed in the City of Seattle, provides legal advice to City clients on criminal justice matters, monitors state criminal justice legislation of interest to the City, and participates in criminal justice policy development and management of the criminal justice system. In addition, the Division operates a Victim of Crime Program that assists crime victims in obtaining restitution, obtaining information about the progress of their cases, and providing information concerning

their rights. The Division also operates an extensive volunteer program through which citizens can provide service to, and gain a better understanding of, the criminal justice system.

The Administration Division provides support to the other divisions with clerical, accounting and technological assistance. The technical support staff provides not only routine computer maintenance, but also innovative solutions to reduce costs and increase office efficiency.

Civil Division

The Seattle City Attorney's office takes great pride in its in-house expertise. The City Attorney's office provides prompt, cost-effective and professional legal assistance to City clients without the expense of retaining outside counsel. This policy results in substantial savings to the City's taxpayers, while allowing the City to develop expertise in areas unique to Municipal government. In 2003 Civil Division attorneys provided more than 95,000 hours of legal service to the City at a "cost" of \$6.5 million. This same level of service in the private sector would cost more than \$15 million (assuming a conservative market average hourly rate of \$150). The City's "cost" was less than \$68 per hour.

The Civil Division has been under increasing stress recently. The City's budget grew dramatically in the late 1990s resulting in increased activity and expansion throughout Seattle coupled with increased litigation and increased need for legal guidance, particularly in the areas of land use, contracts, environmental protection and torts. In addition, the City has been engaged in a large-scale capital construction program including the new Justice Center, the new City Hall, McCaw Hall and the new downtown library. In addition, the Libraries for All levy and Pro Parks levy have spawned numerous construction projects throughout City neighborhoods. Civil Division lawyers were involved in many aspects of all these projects from drafting the original levies and ordinances through negotiating the transactions, and where necessary, handling construction claims. As a result the Civil Division's workload has increased by 44% since 1998 without any increase in staffing. This strain notwithstanding, the

Civil Division continues to provide excellent legal services to its clients: in a 2002 customer satisfaction survey the office received favorable ratings from 90% of its clients. Highlights from each section follows:

Contracts Section

The City of Seattle enters into and maintains many relationships with a wide range of parties. The City purchases an extensive variety of products and services and enters into complex agreements to build major projects. The Contracts section provides assistance to the Executive and the City Council to protect the City's interests in these documents. Highlights of the Contracts section's work included the following:

In *Tri-State Construction v. Seattle*, the Contracts section negotiated a favorable settlement in a lawsuit involving the blow-in of an access shaft on one of the Tolt 2 pipeline tunneling projects. The City was faced with contractor claims of up to \$6 million. The Contracts section ultimately settled the claim after two mediations, with the City receiving a payment of more than \$800,000 and a dismissal of all of the contractor's claims.

In *FCCC v. Seattle*, the Contracts section negotiated a favorable settlement in this and two related lawsuits involving a landslide on another Tolt 2 pipeline tunneling project. In this case, the City faced substantial exposure to the contractor's claims (in excess of \$2 million) as a result of a dispute resolution board's recommendation that the landslide was caused by a "changed condition." Following successful mediation, the City paid less than \$50,000 of the

more than \$1 million that the contractor and its subcontractor received (the remainder was funded by various insurers of the project).

The section was involved with the Parks Department's efforts to replace the non-profit corporation that had managed the City's golf courses since 1995. By the time the decision was made to replace the non-profit, it owed the City more than \$1.5 million for course maintenance. The decision to replace the non-profit was complicated by the actions of a bank that foreclosed on its loan to the non-profit, and exercised its right to proceeds generated by the golf operations (i.e., it emptied out the non-profit's bank account). With the assistance of the section, the Parks Department removed the old manager, brought in a new manager, and ensured that the non-profit's employees were paid and offered positions with the new manager, all while keeping the courses open to the public.

Section staff did significant work on the Libraries for All Program, which entailed defending the \$17,000,000 construction claim arising out of the construction of the new downtown library, completing the land acquisitions for the remaining properties and drafting numerous agreements for, among other things, book moving, lease of space for the Friends' Shop and various technology contracts. The Contracts section worked on the monorail, including completing the Transfer and Assignment Agreement, and beginning the development of the ground lease and construction agreements.

The section worked with the Benefits Unit of the Personnel Department and the trustees of the Deferred Compensation Plan to run a competitive procurement to select the next

Deferred Compensation Plan administrator (i.e., a large mutual fund investment company). Based on the results of the RFP, the section has been negotiating a new agreement with the apparent successful bidder. The Contracts section pursued the City's \$12.5 million insurance claim arising out of earthquake damage to the Park 90/5 complex. The section also provided ongoing legal advice in support of the Civic Center development project including Justice Center, City Hall and the design/build project for the Public Safety Building Plaza.

Civil Enforcement Section

The Civil Enforcement section is the affirmative litigation and problem-solving arm of the City Attorney's office. The Civil Enforcement section handles a wide range of enforcement duties ranging from civil rights violations to animal control matters. The Civil Enforcement section provided leadership on several important high profile matters. Section attorneys assisted in negotiating a \$3.9 million settlement with a trucking company whose driver damaged the Pioneer Square Pergola. Section attorneys working with Land Use section attorneys negotiated a \$500,000 settlement to fund replacement of trees illegally cut in a City park. This settlement will not only fund complete restoration but also allow implementation of the original Olmstead brothers plan for the park and some surrounding areas. Section attorneys working closely with the Executive and the Council helped draft the new residential noise ordinance. This ordinance is designed to provide an effective solution to late night noise disturbances in single family and multifamily zones in the City. The ordinance applies to frequent, repetitive or continuous noise, emanating from a gathering of more than one person

at a residential property, audible to a person with normal hearing at a distance of 75 feet or more from the property. Section attorneys provided training on enforcing the new ordinance at police evening shift roll calls at all five police precincts.

The Civil Enforcement section also serves in less high profile matters. Section attorneys and staff work to collect money owed to the City. This year attorney Thom Castanga, paralegal Olga Lamarche and legal assistant Patricia DeKlerk were honored with the 2003 Seattle Works! Financial Wizard Award for their creative and cooperative approach to collecting obligations owed to the City. Section attorneys also provide ongoing legal advice to the City's Office of Civil Rights and litigate discrimination cases before the City's Hearing Examiner and in court.

Employment Section

With as many as 15,000 employees, the City of Seattle is one of the largest employers in the greater metropolitan area. As does any large business, the City faces a wide range of employment-related challenges. Employment section attorneys advise City departments on matters relating to discipline, sexual harassment, ADA, job elimination & retraining, and labor negotiations. This preemptive approach frequently serves to head off conflicts that might otherwise result in litigation. When lawsuits are filed, the Employment section provides the City with proactive and cost-effective defense. The following are a few examples of Employment section cases last year that resulted in substantial monetary savings to the City:

- *City of Seattle v. Glaser*: This matter was filed in November 2002 and alleged the City violated provisions of the temporary worker settlement (*City of Seattle v. Scannell*). A spirited defense successfully defeated the plaintiffs' motion for summary judgment.
- *City of Seattle v. Hardee*: The section successfully defended a discrimination claim brought by a DCLU employee. Following the City's filing of a strong summary judgment brief, plaintiff's counsel agreed to a stipulated dismissal with prejudice.
- Havsal v. Parks Department: The plaintiff, a vocal Camp Long employee alleged wrongful termination. A vigorous defense resulted in the Hearing Examiner upholding the termination.
- Josef v. SPD: Josef alleged discrimination by SPD and filed a failure to hire claim with the Office of Civil Rights. After years of wrangling and argument between the OCR and its Commission (with no satisfactory result) the plaintiff filed a claim in Superior Court. The City's motion to dismiss was granted and later affirmed on appeal by both the Court of Appeals and the Supreme Court.
- Robertson v. City of Seattle (Department of Finance): Robertson filed a claim alleging
 DCLU failed to accommodate her disability. The City prevailed in its summary judgment
 motion and the case was dismissed in its entirety.

Environmental Protection Section

The Seattle City Attorney's office was one of the first in the country to create a section of attorneys and staff dedicated to environmental protection. It continues to take the lead in protecting, defending and restoring the City's natural resources.

In the area of protecting water quality, the section continued to assist Seattle Public Utilities (SPU) in meeting State and Federal water quality requirements for stormwater and Combined Sewer Overflows. They also advised on enforcement of the City's Stormwater, Grading and Drainage Control Code.

Regarding contaminated sediments in Seattle lakes and rivers, the section worked closely with City staff to address contaminated underwater sediments in the Lower Duwamish Waterway and Lake Union in a manner that is scientifically sound, meets regulatory requirements, and does not impose an unfair burden on City taxpayers and ratepayers.

The section helped negotiate and structure an agreement between the City and Bonneville Power Authority regarding a new transmission line through the Cedar River Watershed. Working with SPU staff, the section helped implement a Habitat Conservation Plan for the Cedar River Watershed, including defending attacks on various aspects of that Plan.

Land Use Section

One of the most important responsibilities of a city is regulating development. This is carried out through enforcement of zoning, development standards, building and other construction codes, environmental regulations and other ordinances such as landmarks preservation. The attorneys and staff in the Land Use section assist both the Executive departments and the Council in managing this complex system of rules.

1. Litigation

The section handles a wide range of litigation matters arising out of the City's regulation of land use. In the *Esplanade* case, the cancellation of a permit application for development over water led to a challenge to the City's ability to regulate in the shorelines. The 9th Circuit of the U.S. Court of Appeals upheld the City's decision and the U.S. Supreme Court did not take review and let that decision stand. In the *Onsite Advertising* case, the 9th Circuit also upheld the city's sign code against a constitutional challenge. In the Initiative 80 litigation, the section's attorneys, assisted by the Environmental Protection section, brought a successful pre-ballot challenge to the so-called "save our creeks" initiative. The section also successfully defended the City's issuance of a permit to the Fremont Sunday Market against a challenge by a local business claiming that the market eliminated on-street parking needed for their business.

The section also reached successful settlements in a number of cases including a lawsuit by the United Indians of All Tribes regarding its proposed People's Lodge in

Discovery Park, a lawsuit over the use of a vessel for a rowing club, and litigation challenging the regulation of the placement of a playhouse which neighbors complained served more like a second residence on the property. The section also monitored the earlier settlement with Tent City which had helped to ease civic tensions over this historically contentious encampment. In addition, there were at least ten land use appeals to Superior Court that the section defended.

A part of the section's work involves Hearing Examiner appeals. These cases generally involve challenges to SEPA compliance for policy initiatives by the Executive and the City Council. In 2003, section attorneys successfully defended challenges brought in the Northgate redevelopment effort, in the initiative to encourage biotech development in South Lake Union, and in other proposed changes to the Land Use Code to address the needs of schools, for instance.

Seattle's construction codes exist principally to protect the community from unsafe building practices so enforcement is an important part of the Land Use section's work. The section brought more than 90 enforcement actions in Municipal Court in response to violations of the building and other codes that could not be resolved through the DPD's administrative mechanisms.

2. Projects

The section provided advice and drafting assistance to support major City projects, including fourteen separate Pro Parks levy acquisitions in 2003. The section helped re-write

the pole postering ordinance to conform to the *Mighty Movers* decision, and worked on Sound Transit property transfer agreements, code amendments and permit conditions. The section provided coordination of monorail projects throughout the City Attorney's office and provided assistance with the Holly Park, High Point and Rainier Vista reconstruction projects. Other projects to which the section provided assistance included: telecommunications amendments; amendments to allow the Seattle Art Museum's expansion into the proposed Washington Mutual development; the First Avenue South Bridge property settlement; the Burke-Gillian Trail "missing link" legislation; the Ship Canal Trail acquisition and the Olympic Sculpture Park. The section drafted many ordinances including those for parking pay stations, bed & breakfasts, parking reductions, heights for grocery stores, street vacations and rezones.

Municipal Law Section

The Municipal Law section primarily handles matters that arise from the City's role as a government entity. These include advising on and litigating a myriad of constitutional, election law, ethics and finance issues.

1. <u>Litigation Issues.</u>

The section successfully represented the City in the *Cogswell* litigation in which the 9th Circuit U.S. Court of Appeals upheld the City's rule prohibiting discussing one's opponent in the City-paid voters' pamphlet. During the *Seattle Times* litigation, which involved a series of requests for utility billing records, the section defended the City's right

to notify individuals identified in documents of the pending request before release. In the *ACLU* litigation, the section defended the confidentiality of collective bargaining documents during negotiations.

The section also provides litigation support for the collection of Business and Occupation Taxes. In 2003 the section helped collect \$5.7 million in B&O and Utility taxes through negotiation and litigation.

2. Education and Training.

The section provides training services to departments on various issues including public records retention/disclosure and drafting ordinances. Section staff also provided training to the Retirement Board and Human Rights Commission on their respective legal roles and obligations, and to Revenue and Consumer Affairs staff on handling tax collection from taxpayers in bankruptcy.

3. <u>Legislation Drafting.</u>

The section is responsible for drafting key legislation for the City's policy makers. In 2003, the section assisted in drafting legislation including the following:

- a. Updating the Tax Code to meet state law model ordinance;
- b. Placing the Fire Facilities measure on the ballot and to implement the measure once approved;
- c. Simplifying and reducing the cost of film industry permits;
- d. Updating the Retirement Code; and
- e. Precluding City employees from asking about immigration status.

Torts Section

Seattle, like any government or business, faces a variety of claims for personal injury. The Torts section is charged with limiting the City's liability for such claims both by improving practices to avoid injury and by defending the City when a lawsuit is filed. 2003 was the City's second year operating under the new risk management program adopted in 2001. The Torts section works closely with the City's Risk Manager, providing risk management consultation and liability analysis for operating departments. This ongoing legal support involves field visits to work units or locations, and consultation with managers in departments such as Human Services and Probation. The section's attorneys also work with managers on drafting policies and procedures and controlling or transferring risk exposures.

Effectively defending the City requires a recognition that there are times when cases should be settled either because the plaintiff has a legitimate claim and is entitled to compensation or because the risk of a substantial jury verdict justifies settlement. The Torts section's philosophy is to settle meritorious claims while vigorously contesting non-meritorious claims.

An example of the litigation work of the Torts section resulted from a catastrophic murder/suicide and subsequent crash of a Metro bus. The bus crashed through the Aurora Bridge guardrail upon which the City has certain maintenance responsibilities. The City was sued by a police officer exposed to AIDS-tainted blood who alleged defects in the Police Department's blood born pathogens program. A bus passenger, who lost an arm and a leg in

the crash, also filed suit. The City won a complete defense jury verdict in the police case (*Cowdrey v. Seattle*) and convinced the catastrophically injured plaintiff in the other matter to settle for \$2,000.

Many cases do not even reach a jury. The section prevailed in several significant matters by convincing judges to dismiss the complaints outright. Illustrative cases include: *Skubatch v. Seattle* (serious brain damage traffic engineering/signing case), *Moore v. Seattle* (serious brain damage highway maintenance case), and *Martin v. Seattle* (wrongful death Duwamish drowning case) were all dismissed by the trial courts. The *Skubatch* dismissal has been affirmed by the Court of Appeals and review denied by the Supreme Court. The *Martin* matter is on appeal. The Torts section emerged victorious and secured defense jury verdicts in numerous other more routine cases such as *Hunegaw v. City* (police collision property damage/business interruption case).

The section also has been successful in persuading insurance companies to defend the City. In *Stone v. Seattle* (serious brain damage, alleged public facilities operations negligence arising from crowd surfing during a concert at Key Arena) the insurance company not only finally settled the case at no cost to the City, but wrote the <u>City</u> a check for \$450,000 for costs and attorneys fees.

As a property owner and utility operator throughout Seattle the City is constantly exposed to claims and lawsuits related to landslides. These cases tend to come in waves caused by periods of sustained rains. A substantial cohort of such cases was filed against the

City after the winter rains and snows of 1996 and 1997. The Torts section rendered distinguished service to the City on these cases, the signature event being a major landslide on Perkins Lane in which six valuable houses were totally destroyed. The City won dismissal of the resulting lawsuit (*Price v. City*) and the resulting appellate court decision made new law protecting the City from liability for landslides resulting from natural conditions.

The Seattle Police Department often faces lawsuits stemming from the work of its officers, as does any major metropolitan police department. The City handles such claims through the Seattle Police Liability Program, administered through the Torts section. Since 1990 the City has won defense verdicts in more than 20 jury trials in which police officers were charged with wrongdoing. In that time there has not been a jury verdict against the City or one of its officers.

The 1999 WTO conference spawned a subset of police litigation. Every court has upheld the emergency declarations and emergency order issued during the conference. On December 1, 1999 a federal district judge denied the ACLU's request for emergency relief to dissolve the limited access zone created to protect the conference. Another federal district judge granted the City's motion for summary judgment determining that the zone was constitutionally created and enforced. This ruling is on appeal. The City also has faced lawsuits by numerous individuals who were arrested during WTO. The vast majority of these suits have either been dismissed or settled.

Utilities Section

The utilities section is responsible for diverse matters relating to the management and delivery of water, electricity, waste disposal and recycling in the City, which is unique in its ownership of two public utilities (Seattle City Light, Seattle Public Utilities). Utilities law is highly complex; it involves a unique combination of science, contracts, environmental protection and land use issues. Seattle's utilities affect each and every one of Seattle's 550,000+ citizens.

Some highlights of 2003 include:

- Greenhouse Gas Offset contract acquiring through an assignment contract greenhouse gas offsets;
- Master Sewer License Agreement allowing innovative use of the City's sewer system for dark fiber;
- Puget Sound Energy substation to provide expanded electric service through a new substation located adjacent to SPU's new ozonation plant at Lake Youngs;
- Cascade Water Association 50-year declining block contract conclusion of 11-year negotiation for the supply of wholesale water that provides for a gradual decrease in the amount of water purchased by Cascade and the return of that historic water supply to Seattle for future use;

- BPA transmission agreement for construction of a second transmission line across the
 Cedar River Watershed conclusion of two year negotiation for accommodating
 increased electric transmission reliability while maintaining environmental protection;
- Sound Transit: negotiation of MLK undergrounding and community development fund agreements;
- Power Purchase Agreement with Grant County PUD for continued purchase of a percentage output from the Priest Rapids Project;
- Inn at the Center trial court ruling preserving clear title to land for the Seattle Center and cancellation of leasehold rights of Inn at the Center;
- Continuation of legal proceedings at FERC; currently in the 9th Circuit Court to obtain refunds for the damages suffered from the failed electric deregulation experiment and market manipulation in California during 2000-2001; and
- Olympic Pipeline negotiation and litigation regarding federal preemption of safety oversight and contract enforcement.

Public & Community Safety Division

In late 2003, the Criminal division received a new name to reflect a refocused mission. Over the last five years, Seattle has participated in a United States Department of Justice program to increase public safety by providing communities with direct access to prosecutors working out of police precincts. Prosecutors have come to realize that some public safety and neighborhood livability problems can be better addressed through community-oriented problem solving rather than by traditional "case-by-case" prosecution. In 2004, the PCS division will adjust its business processes to incorporate this new priority. The division is re-writing the Filing and Disposition Standards, engaging in dialogue with the Municipal Court and the Defense bar on alternatives to incarceration and incorporating the existing precinct liaison program into the newly renamed Public & Community Safety (PCS) division.

There is work ahead, but there is much to be proud of in 2003. Another important goal last year was to improve morale among the prosecutors. These individuals play a key role in protecting public safety and the quality of life Seattle. Seattle is fortunate in its experienced cadre of senior prosecutors and staff. In 2003, the PCS division eliminated mandatory weekend duty, hired a part-time prosecutor to handle several night court calendars and moved the PCS office to a new more professional office space in the Key Tower. Perhaps as a result of these changes, in 2003, for the first year in many, there was

no attorney turnover in the PCS division. Retaining experienced prosecutors in the office pays a huge dividend for the people of the City of Seattle.

PCS Highlights

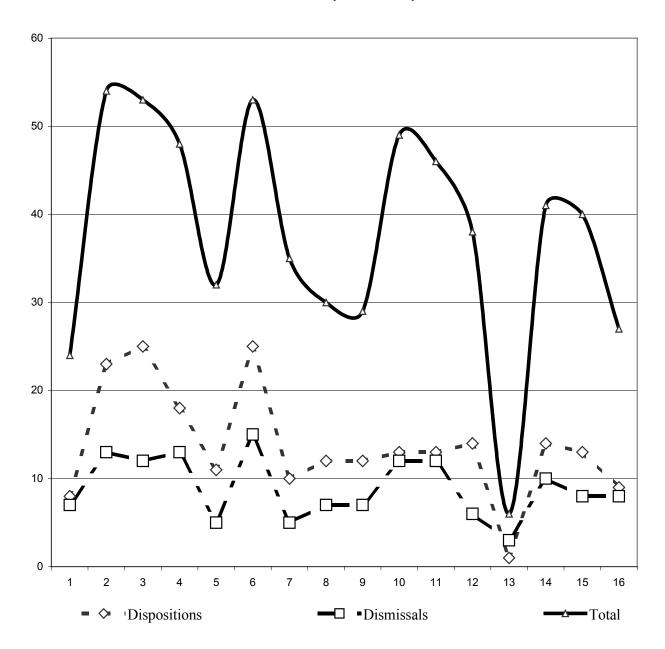
Since 1990, the Seattle Municipal Court has experienced a steady decrease in its caseload. Although the 2003 caseload was less than half of what it was in 1990, today's cases are much more complex given changes in DUI and domestic violence prosecution techniques and requirements imposed by legislative and judicial changes. In 2003, however, for the first time in a decade there was an increase in cases filed in the Municipal Court as compared to the previous year with cases filed increasing 7%. This is a trend that must be monitored very closely. Over the last five years, City budgets have taken a "peace dividend" from the budgets of the Municipal Court and the City Attorney's Office. In 2002, the City eliminated two judicial positions reducing the Court from ten judges to eight. Since 1997, the City Attorney's PCS staff has been reduced by 22%. If there continues to be an increasing and complex caseload and declining prosecutorial resources, there will be an impact on public safety. The PCS division workload data was as follows:

Office Totals	1st Q	2nd Q	3rd Q	4th Q	TOTAL
2003 Reports Recd	5624	5995	6066	5148	22833
2002 Reports Recd	5335	5282	5730	5430	21777
DIFF 2003-2002	289	713	336	-282	1056
% Change	5%	13%	6%	-5%	5%
2003 Cases Filed	4078	4440	4010	3864	16392
2002 Cases Filed	3811	3704	4055	3753	15323
DIFF 2003-2002	267	736	-45	111	1069
% Change	7%	20%	-1%	3%	7%
2003 Jury Trial Settings	523	468	512	548	2051
2002 Jury Trial Settings	1187	1114	720	565	3586
DIFF 2003-2002	-664	-646	-208	-17	-1535
% Change	-56%	-58%	-29%	-3%	-43%
Domestic Violence	1st Q	2nd Q	3rd Q	4th Q	TOTAL
2003 Reports Recd	1004	1112	1233	1022	4371
2002 Reports Recd	1086	1068	1237	1006	4397
DIFF 2003-2002	-82	44	-4	16	-26
% Change	-8%	4%	0%	2%	-1%
2003 Cases Filed	362	432	479	368	1641
2002 Cases Filed	423	385	424	367	1599
DIFF 2003-2002	-61	47	55	1	42
% Change	-14%	12%	13%	0%	3%
2003 Jury Trial Settings	125	110	150	134	519
2002 Jury Trial Settings	262	262	224	162	910
DIFF 2003-2002	-137	-152	-74	-28	-391
% Change	-52%	-58%	-33%	-17%	-43%

Driving under the Influence	1st Q	2nd Q	3rd Q	4th Q	TOTAL
2003 Reports Recd	455	400	289	388	1532
2002 Reports Recd	415	379	380	456	1630
DIFF 2003-2002	40	21	-91	-68	-98
% Change	10%	6%	-24%	-15%	-6%
2003 Cases Filed	429	372	280	365	1446
2002 Cases Filed	394	358	369	433	1554
DIFF 2003-2002	35	14	-89	-68	-108
% Change	9%	4%	-24%	-16%	-7%
2003 Jury Trial Settings	97	107	98	94	396
2002 Jury Trial Settings	203	188	103	61	555
DIFF 2003-2002	-106	-81	-5	33	-159
% Change	-52%	-43%	-5%	54%	-29%
DWLS	1st Q	2nd Q	3rd Q	4th Q	TOTAL
2003 Reports Recd	1333	1441	1278	1003	5055
		1 1 1 1	1270	1003	0000
2002 Reports Recd	935	1031	1120	1184	4270
2002 Reports Recd DIFF 2003-2002	935 398				
		1031	1120	1184	4270
DIFF 2003-2002	398	1031 410	1120 158	1184 -181	4270 785
DIFF 2003-2002	398	1031 410	1120 158	1184 -181	4270 785
DIFF 2003-2002 % Change	398 43%	1031 410 40%	1120 158 14%	1184 -181 -15%	4270 785 18%
DIFF 2003-2002 % Change 2003 Cases Filed	398 43% 1319	1031 410 40% 1438	1120 158 14% 1248	1184 -181 -15% 985	4270 785 18% 4990
DIFF 2003-2002 % Change 2003 Cases Filed 2002 Cases Filed	398 43% 1319 929	1031 410 40% 1438 1017	1120 158 14% 1248 1113	1184 -181 -15% 985 1130	4270 785 18% 4990 4189
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It became clear in 2003 that the Municipal Court requires more trial capacity. Trial capacity directly affects outcomes in cases that are set for trial. A sixteen-week study conducted during fall 2003, demonstrated that when trial caseload increases, there is a parallel increase in pleas and dismissals. All other outcomes (continuances, bench warrants and trials) remain relatively flat. Thus, when caseload increases, the excess capacity is handled through plea bargains and dismissals. This suggests strongly that with increased trial capacity there would be improved criminal justice outcomes.

Master Calendar Dispositions September - December 2003



Subpoena Workgroup Outcomes

In 1999, the Seattle Police Department, the Seattle Municipal Court, the Seattle City Attorney's office and representatives of the criminal defense bar formed a group to improve police officer attendance at Municipal Court trials. In July 2002, participants implemented the Subpoena Workgroup's recommendations which included the following:

- The City Attorney's office assumed responsibility for trial scheduling and obtained access to accurate police officer scheduling information. With this change, all attempts are made to schedule trials when officers are on duty and available.
- The Seattle Municipal Court agreed to allow police officers to place themselves "on-call." Thus, police officers need not appear in court at 8:30 a.m. and risk waiting for hours for a trial to begin; officers promise to appear within 90 minutes of a call from the City Attorney. Since only 10% of cases set for trial are actually tried, in most cases, the officer never needs to come to court.
- Seattle Municipal Court cases now are set for a "date certain." Formerly all cases were set for the Tuesday of trial week. Cases are now set for a particular day within the week, which eliminates officers sitting for several days before a trial begins.

The results of these changes have been dramatic. Between July 2002 and September 2003 there was a 40% reduction in police court-related overtime as compared with a similar period before these changes were implemented. For the first six months of 2003, there was a 57% reduction in trial settings as compared to the same six months the year before. These changes represent significant budget savings in a difficult budget time.

DWLS Impound

Filings for Driving with License Suspended cases increased dramatically in 2003. This increase directly reflects the lack of deterrence provided previously by threat of impound of cars driven by individuals with suspended licenses. As a result of a Supreme Court decision, Seattle Police Department vehicle impounds dropped drastically in early 2003. Almost immediately there was an increase in suspended license cases. This increase can only be attributed to the lack of deterrent effect of impound, because although this office dismisses cases for first time offenders whose cars are impounded, those cases are still filed and factored in the data presented above. As the impound rate increased through the year, the filing rate dropped. This data again demonstrates the deterrent effect of the impound program.

As part of the 2003 budget process, the City Council passed a budget proviso providing funding for a Car Recovery Clinic through 2004 without providing any funding to the City Attorney's office to defend the cases brought by the Car Recovery Clinic. At the time the Council did not have the benefit of any data regarding the operation of the Clinic during its nine-month pilot program. The Clinic's principal problem arises from the concept of funding a class at the University of Washington to deliver services to needy citizens of the City of Seattle. The data dramatically supports this assertion. The Car Recovery Clinic, using students and volunteer attorneys, brought forty-eight cases with a budget of \$150,000, which works out to \$3,125 per case. By way of comparison, the PCS division's budget for

prosecuting criminal cases, with paid staff, was only \$304 per case. Moreover, of the forty-eight cases brought only fourteen were adjudicated completely. The vast majority were resolved amicably without the need for a hearing. Indeed, most of those cases could have been settled with a phone call or a negotiation. Of the fourteen cases adjudicated, the City won eight. Thus, it could be argued that the Clinic's litigation made a difference in only six cases.

Despite these problems the Clinic served an important informational function, and this appears to be its greatest value. Although duplicative of efforts already underway in the Municipal Court, it would appear that the most cost-effective use of the funds appropriated would be to focus on an ombudsman function and eliminate the litigation function. This was the conclusion of an outside consultant who conducted an evaluation of the Clinic pursuant to the budget proviso.

The PCS division has taken steps to facilitate the handling of DWLS cases. Early in 2003, the PCS division changed its policy on charge reductions for first time offenders who manage to get re-licensed. Previously, if a person obtained a valid driver's license, the PCS division agreed to reduce the DWLS 3d degree charge to the misdemeanor driving without a license. In 2003, the office agreed to reduce the charge to an infraction. This means that individuals who successfully obtain a license will complete the process without a criminal record.

During the year, working closely with the Seattle Municipal Court, the office designed a more complete diversion program. This program, modeled after a program at King County District Court, will provide for complete dismissal of the case if the defendant obtains a driver's license. An important component of the new program is a requirement that the defendant complete a traffic safety class. A recent study completed by the Rand Corporation concluded that individuals who drive with suspended licenses are more dangerous than other drivers. Since the most common way to have a license suspended is to fail to respond to a moving violation, it follows that those with suspended licenses are individuals in need of further driver's education and training. The Seattle Municipal Court's new diversion program will not only help individuals obtain a driver's license, but also help them become safer drivers.

Cameras in Police Cars

2003 was the first full year of Seattle Police Department operation of cameras in police patrol cars. Continuing the operation after an initial pilot project, the police department currently has twelve cameras deployed. These units are in cars used by traffic officers and the DUI squad. This technology has been very beneficial to the City Attorney's office. The likelihood of a conviction in a DUI case increases significantly if there is videotape of the traffic stop. Video footage demonstrates dramatically the true condition of the driver on the night of the arrest. Jurors viewing a defendant's behavior may judge the level of intoxication much more clearly than in previous cases where all they could consider was the an officer's

testimony. In addition, the videotape frequently may be used to establish the basis for the initial stop, limiting the defendant's ability to raise a fact-based challenge to the constitutionality of the stop.

Cameras also have provided protection for police officers accused falsely of misconduct. In October, the PCS division filed a criminal charge of false reporting against an individual who made a false complaint against a police officer. Fortunately for the officer the entire interaction was videotaped, giving lie to the defendant's allegations of misconduct. This case is currently pending before the Seattle Municipal Court.

Domestic Violence Prosecution

The PCS division continues to play a leadership role in domestic violence prosecution. 34% of the PCS division budget and 10% of the overall office budget is devoted to personnel costs for people whose job is exclusively domestic violence prosecution.

Seattle is a national leader in its coordinated approach to domestic violence.

The City is currently completing a review of its approach to Domestic Violence, and the office was the subject of Domestic Violence Safety Audit. The audit praises the division's coordinated approach to domestic violence prosecution. It also recognizes the office's leadership in the effort to address this difficult problem. The audit recommended several areas of improvement in how the office addresses domestic violence cases. The PCS division has begun implementing these suggested changes. This project will be completed by the end of the second quarter of 2004.

Driving Under the Influence Prosecution

A very important area of the PCS division's work is prosecuting drunk drivers, and 2003 was another difficult year in this area. Seattle Municipal Court judges continue their policy of excluding blood alcohol content (BAC) tests if there is any deviation from state regulations for administering such tests even if the deviation had no effect on the test. Seattle's aggressive criminal defense bar has repeatedly found minor deviations to support suppression. Without a BAC, conviction rates drop significantly. These cases represent a serious public safety consideration because they involve drivers whose blood alcohol level was above the legal limit in a valid test, which the jury was not allowed to consider. Thus, the defendant is given a free pass on a drunk driving charge. The Washington State Supreme Court recently has accepted appeal on this issue.

Seattle Justice Information System (SEAJIS)

In late 2002, the City Attorney took over executive sponsorship of the SEAJIS project. SEAJIS is a long standing multi-departmental effort designed to facilitate timely and accurate data exchanges between the computer systems of the Seattle Municipal Court, the Seattle Police Department, the Seattle Fire Department and the City Attorney's Office. 2003 saw important progress on SEAJIS including adoption of a phase one workplan for 2003-2004, selection of the vendor providing the technical solution for SEAJIS, on time installation and configuration of the data exchange broker, and work on the first three data exchange applications. Consistent with the workplan, these applications should be completed by the

second half of 2004. Progress on SEAJIS will make an important contribution to improving public safety in Seattle and allow the criminal justice system to do so in an effective, efficient, and secure manner.

TOPOFF 2

In the Spring 2003, Seattle was one of three cities nationwide to participate in TOPOFF 2, a mock exercise involving the terrorist explosion of a so called "dirty bomb". Attorneys from both divisions participated in the virtual 3-day 'round-the-clock exercise along with representatives from a multitude of other agencies from the city, state and national government. Important lessons were learned regarding how to handle such a threat and work collaboratively to coordinate an appropriate response. Though we hope to never have to experience such an event, we are a better prepared city as a result.

Proactive Problem-solving in the Housing Area

The PCS division and Land Use section continue to play significant roles in the Special Emphasis Housing Task Force. This is a multi-agency, multi-disciplinary group under the Department of Neighborhoods. The Task Force seeks to resolve serious public health and safety hazards related to residential homes. The Task Force meets regularly and explores ways in which City resources can resolve issues short of litigation. If that cannot be done, the Task Force explores the best avenues for a positive outcome, whether through civil or criminal litigation or in some other creative manner.

Animal Control Legislation

PCS division attorneys worked with the Civil Enforcement section to assist in drafting Animal Control legislation that provides greater opportunity for animal owners to be heard while also allowing prosecution to proceed more smoothly in appropriate cases.

Leadership in Mental Health Issues.

The PCS division continued its leadership role on a local, regional and statewide basis in mental health issues related to the Criminal Justice system. PCS division attorneys have spoken at several conferences on a wide range of issues, prepared form orders that are used statewide by many/most prosecution agencies, and are participating in efforts to propose legislative amendments in light of recent case law.